

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Dino & Artie's Automatic Transmission Co., Inc. :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Years 1977 & 1978. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 15th day of April, 1985, he served the within notice of Decision by certified mail upon Dino & Artie's Automatic Transmission Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dino & Artie's Automatic Transmission Co., Inc.  
Route 22  
Croton Falls, NY 10519

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
15th day of April, 1985.

David Parchuck

James A. [Signature]  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Dino & Artie's Automatic Transmission Co., Inc. :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Years 1977 & 1978. :  
\_\_\_\_\_ :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 15th day of April, 1985, he served the within notice of Decision by certified mail upon John E. Russi, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John E. Russi  
John E. Russi & Co., CPA's  
208 Greenwood Ave., P.O. Box 132  
Bethel, CT 06801

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
15th day of April, 1985.

David Parchuck

Annunzio A. DeSantis  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

April 15, 1985

Dino & Artie's Automatic Transmission Co., Inc.  
Route 22  
Croton Falls, NY 10519

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
John E. Russi  
John E. Russi & Co., CPA's  
208 Greenwood Ave., P.O. Box 132  
Bethel, CT 06801  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
DINO & ARTIE'S AUTOMATIC TRANSMISSION CO., INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Years 1977	:	
and 1978.	:	

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Petitioner, Dino & Artie's Automatic Transmission Co., Inc., Route 22, Croton Falls, New York 10519, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1977 and 1978 (File No. 40040).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 26, 1984 at 9:15 A.M. Petitioner appeared by John E. Russi & Co., CPA's (John E. Russi, CPA). The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioner's 1977 and 1978 refund requests on the basis that they were untimely filed.

FINDINGS OF FACT

1. Petitioner, Dino & Artie's Automatic Transmission Co., Inc., by a letter dated May 12, 1982, which was received by the Audit Division on May 17, 1982, requested a refund of corporation franchise tax in the amount of \$1,272.00 for 1977. Petitioner explained that its former accountants failed to claim investment tax credits on its 1977 tax return on the purchase of milling

machines. By a separate letter also dated May 12, 1982, which was received by the Audit Division on May 17, 1982, petitioner requested a refund of corporation franchise tax in the amount of \$4,628.00 for 1978. Petitioner explained that its former accountants failed to claim investment tax credits on its 1978 tax return on the purchase of various manufacturing equipment.

2. Petitioner claimed investment tax credits of \$6,450.76 and \$15,619.23 on its federal corporation income tax returns for 1977 and 1978, respectively. However, it failed to claim any investment tax credits on its New York corporation franchise tax reports for 1977 and 1978 which were filed on June 15, 1978 and March 19, 1979, respectively. Its tax returns for the years at issue were prepared by its former certified public accountant.

3. The Audit Division denied petitioner's refund requests for 1977 and 1978 in separate letters, both dated August 31, 1982. The letters explained that (i) the final date for filing an amended 1977 report was June 15, 1981, three years from when the 1977 report was filed (or June 15, 1978), and (ii) the final date for filing an amended 1978 report was March 19, 1982, three years from when the 1978 report was filed (or March 19, 1979). Because the 1977 and 1978 refund requests (which, in effect, amended the 1977 and 1978 tax reports) were not filed until May 17, 1982, they were treated as untimely by the Audit Division.

4. Petitioner maintains and services transmissions and has contracts to provide such services to various municipalities. Dino Magaletto, who is president and majority shareholder of petitioner, assumed responsibility for petitioner's finances after the years at issue. He discovered that the corporation's financial condition was in disorder and hired a new accountant for the

corporation. According to his testimony, he has managed "to keep it (petitioner) alive" and save thirty to forty jobs.

5. Mr. Magaletto testified that he is unable to locate the accountant who failed to claim the investment tax credits on petitioner's tax reports for the years at issue.

CONCLUSIONS OF LAW

A. That petitioner's claims for refund of corporation franchise tax for 1977 and 1978 were not filed within the period of limitation set forth in Tax Law §1087(a) and were not timely filed.

B. That, therefore, the Audit Division properly denied petitioner's 1977 and 1978 refund requests.

C. That the petition of Dino & Artie's Automatic Transmission Co., Inc. is denied.

DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1985

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER